

REMARKS

Status of the Claims:

Applicants have amended the pending claims to clarify the recited seed-specific promoter. As such, claims 1-2 are currently amended; claims 75-88 are new; and claims 3-4, 7-17-22, 25-35, 67-70, and 72-74 are canceled without prejudice or disclaimer. Support for currently amend claims 1-2 and new claims 75-88 can be found throughout the as-filed application, as well as in original claims 1-71. No new matter has been added.

Upon entry of this RCE, claims 1-2 and 75-88 are pending and presented for examination.

Rejections under 35 U.S.C. § 112 (second paragraph):

Claims 18 and 72-74 remain rejected under 35 U.S.C. § 112, second paragraph, for alleged indefiniteness. *See* Office Action, item 4, pages 2-3.

Specifically, the PTO alleges “Claim 18 remains indefinite because it recites at lines 3-4 ‘a nucleic acid sequence that is complementary’ in limiting the promoter used in the method of claim 1, yet it is unclear how a complementary sequence of a promoter would function in the method of claim 1.” *Id.* at page 2. While Applicants do not agree with the PTO’s position, claim 18 has been canceled without prejudice. Because the issue is rendered moot, the rejection should be withdrawn.

Claims 72-74 remain rejected because allegedly “SEQ ID NO: 6 does not contain an ABRE sequence.” Office Action, page 3. The present version of the claims, which do not recite an ABRE sequence, avoid the PTO’s concerns. Accordingly, the rejection should be withdrawn.

Rejections under 35 U.S.C. § 112 (first paragraph):

A. Written Description

Claims 1-4, 7-22, 25-35, and 67-74 remain rejected under 35 U.S.C. § 112, first paragraph for alleged lack of written description. Office Action, item 5, pages 3-5. The PTO bases its rejection on the alleged grounds “SEQ ID NO: 6 does not comprise this ABRE sequence.” *Id.* at page 5. Because the present version of the claims do not recite an ABRE sequence, the PTO’s concerns are moot. Accordingly, the rejection should be withdrawn.

B. Enablement

Claims 1-4, 7-22, 25-35, and 67-74 remain rejected under 35 U.S.C. § 112, first paragraph for alleged lack of enablement. Office Action, item 6, pages 5-7. The rejection is premised on the PTO’s alleged position “it is unclear that Applicants have taught how to make and use the genus of “seed-specific promoter(s) obtained from flax comprising a RY repeat and an ABRE promoter element as broadly claimed.” *Id.* at page 6. As the present claims do not recite a promoter having an RY repeat and an ABRE promoter element, the rejection should be withdrawn.

Double Patenting:

Claims 18 and 72-74 remain rejected for alleged nonstatutory obviousness-type double patenting over claim 1 of U.S. Patent No. 6,777,591 (“the ‘591 patent”). Office Action, item 7, page 7. The PTO alleges “Although the conflicting claims are not identical, they are not patentably distinct because the promoter of SEQ ID NO: 8 in the issued patent, claim 1, is asserted by Applicants to comprise the promoter elements of the instant claim 1.” *Id.*

Applicants respectfully traverse this rejection because the present claims embrace elected SEQ ID NO: 6, rather than SEQ ID NO: 8 as recited in the ‘591 patent. Furthermore, the present claims do not recite the promoter elements allegedly present in claim 1 of the ‘591 patent. As the present invention is patentably distinct from the ‘591 patent, Applicants respectfully request the rejection’s withdrawal.

CONCLUSION

Examiner Kruse is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance prosecution of the present application.

Respectfully submitted,

Date 15 June 2009

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The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.